

**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

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At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12<sup>th</sup> day of March, two thousand fifteen,

Before:

Dennis Jacobs,  
Raymond J. Lohier, Jr.,  
*Circuit Judges,*  
Jesse M. Furman,  
*District Judge.\**

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NATIONAL LABOR RELATIONS  
BOARD

Petitioner

v.

ROSE FENCE, INC.

Respondent

**ORDER**

Docket Number: 15-2

Board Case Nos. 29-CA-030485  
29-CA-030537

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**Judgment Enforcing An Order Of The  
National Labor Relations Board**

This cause was submitted upon the motion of the National Labor Relations Board for entry of a judgment enforcing an order against Respondent, Rose Fence, Inc., its officers, agents, successors, and assigns, enforcing its order dated December 16, 2014, in Case Nos. 29-CA-030485 and 29-CA-030537, reported at 361 NLRB No. 134, and the Court having considered the same, it is hereby

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\*The Honorable Jesse M. Furman, of the United States District Court for the Southern District of New York, sitting by designation.

ORDERED AND ADJUDGED by the Court that the Petitioners, Rose Fence, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

  


NATIONAL LABOR RELATIONS BOARD

v.

ROSE FENCE, INC.

**ORDER**

Rose Fence, Inc., Baldwin, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Unilaterally laying off employees in the following bargaining unit represented by Local 553, International Brotherhood of Teamsters (the Union):

All full-time, regular part-time and seasonal drivers, installers, driver-installers, helpers, installer-helpers, yard workers and carpenters employed by the Employer at its facility located at 939 Church Street, Baldwin, New York excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

without providing the Union with timely notice and an opportunity to bargain about the decision to lay off employees and the effects of the layoff.

- (b) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Before implementing any layoff of bargaining unit employees notify and, on request, bargain with Local 553, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of employees in the bargaining unit, over the decision to lay off employees and the effects of such layoff.
- (b) Within 14 days from the date of the Board's Order, offer the employees unilaterally laid off after the Union's selection as collective-bargaining representative full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
- (c) Make the unit employees described above whole for any loss of earnings and other benefits suffered as a result of the Respondent's unilateral layoff

of employees, in the manner set forth in the remedy section of the judge's decision.

- (d) Compensate the unit employees described above for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its Baldwin, New York facility copies of the attached noticed marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 2010.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**  
Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT lay off employees in the following bargaining unit represented by Local 553, International Brotherhood of Teamsters (the Union):

All full-time, regular part-time and seasonal drivers, installers, driver-installers, helpers, installer-helpers, yard workers and carpenters employed by the Employer at its facility located at 939 Church Street, Baldwin, New York excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

without providing the Union with timely notice and an opportunity to bargain about the decision to lay off employees and the effects of the layoff.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any layoff of bargaining unit employees notify and, on request, bargain with the Union over the decision to lay off employees and the effects of such layoff.

WE WILL, within 14 days from the date of the Board's Order, offer our employees unlawfully laid off after the Union's selection as collective-bargaining representative full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make our unit employees who were unlawfully laid off whole for any loss of earnings and other benefits suffered as a result of our unilateral layoff of employees, less any interim earnings, plus interest.

WE WILL compensate our unit employees who were unlawfully laid off for the adverse tax consequences, if any, of receiving a lump-sum award, and WE WILL file a report with the Social Security Administration allocating their backpay awards to the appropriate calendar quarters.

ROSE FENCE, INC.

The Board's decision can be found at [www.nlr.gov/case/29-CA-030485](http://www.nlr.gov/case/29-CA-030485) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

